

RMH10918

REMARKS

Claims 1-24 are currently pending in this application. Claim 25 has been canceled in order to expedite prosecution.

Claims 1, 12 and 24 have been amended to substitute the term "tracking means" with the term "tracking means for engaging," support for which can be found, e.g., in claim 24, line 4 which discloses "an engageable track means."

Claims 1 and 24 have also been amended to improve readability by inserting commas before and after the phrase "in a substantially vertical direction" to emphasize that the phrase modifies the term "sliding."

Claim 13 has been amended to depend from claim 12, rather than claim 2, to correct an obvious typographical error.

Entry of these amendments is respectfully requested.

OBJECTIONS

Claims 1 and 24 were objected to on the basis that the term "in a substantially vertical direction said left extensible member from a" in claims 1 and 24 "appeared to be grammatically incorrect." Applicant submits that, as originally filed, the term "in a substantially vertical direction" according to common parlance and construction modifies the preceding verb "sliding." For stylistic purposes and to improve the readability of the claim, applicant has bracketed the term "in a substantially vertical direction" by commas to emphasize that this phrase refers to the verb "sliding." Accordingly, it is submitted that the objected to language has been, and is as amended, grammatically correct. In view of this, withdrawal of the objection is respectfully requested.

REJECTION UNDER 35 USC 112

RMH10918

Claims 1, 12, 13, 18, 19 and 22-25 have been rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is respectfully traversed.

In regard to the term "track means" in claims 1, 12, 24, and 25, the Examiner argues that because "no function is specified by the word(s) preceding 'means,' it is impossible to determine the equivalents of the element, as required by 35 USC 112, sixth paragraph." However, applicant notes that the phrase uses the term "track" as a verb, e.g., Webster's New Collegiate Dictionary (1976) defines track as a transitive verb meaning "to follow the tracks or traces of." Thus, one skilled in the art would readily appreciate that the means defined in the claims is a means for following a track or path. As noted in the MPEP §2181:

While traditional "means for" or "step for" language does not automatically make an element a means-(or step-) plus-function element, conversely, lack of such language does not prevent a limitation from being construed as a means-(or step-) plus-function limitation. See Signtech USA, Ltd. v. Vutek, Inc., 174 F.3d 1352, 1356, 50 USPQ2d 1372, 1374-75 (Fed. Cir. 1999) ("ink delivery means positioned on . . ." invokes 35 USC 112, sixth paragraph since the phrase "ink delivery means" is equivalent to "means for ink delivery"). Emphasis added.

Thus, in the present context, applicant submits that it is clear that the term "track means" is equivalent to the term "means for tracking" and that the existing language meets the requirements of 35 USC 112. Nevertheless, in order to expedite prosecution, applicant has amended claims 1, 12 and 24 to replace the term "track means" with "track means for engaging."

Claim 13, rejected as lacking insufficient antecedent basis for the term "at least two of said pins" has been amended to conform with the Examiner's suggestion that claim dependency be changed from claim 2 to 12.

Claims 18 & 19 were rejected as indefinite inasmuch as they use the terms "shaped to conform to a terraced arrangement of goods" and "shaped to conform to a terraced arrangement of bottles," respectively. The Examiner asserts it is improper to define a claimed structure based on a comparison to an unclaimed

RMH10918

element. However, applicant submits that this claim language is analogous to commonly accepted language where structures *capable of receiving a workpiece* are claimed, without claiming the *workpiece itself*. Moreover, the argument that "one would not know whether their device infringed the instant claim until someone else later added a good or a bottle" is specious at best. No good reason exists why those charged with determining the metes and bounds of the claim could not themselves envision an added good or bottle at the time infringement is considered. Accordingly, it is respectfully urged that these claims are sufficiently definite to meet the requirements of 35 USC 112.

Claim 22 was rejected on the basis of the phrase "and/or" rendering the claim indefinite because the claim includes elements not actually disclosed, thereby rendering the scope of the claim unascertainable. However, applicant respectfully submits that identical "and/or" language is set out in the specification at page 4, lines 16 to 19. In common parlance the inclusive "and/or" language embraces a) or b) as well as the combination a) and b). Accordingly, it is respectfully submitted that this claim is sufficiently definite within the meaning of the statute.

Applicant gratefully acknowledges the Examiner's indication of allowable subject matter and submits that the Examiner's objections and rejections have been overcome so that allowance of the claims is now in order.

RMH10918

CONCLUSION

Given the foregoing amendments and remarks, it is respectfully submitted that the claims as presently amended describe patentable subject matter. Accordingly, withdrawal of the rejection under 35 USC 112 is respectfully requested. In view of this, applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Any comments or questions concerning the application can be directed to the undersigned at the telephone number given below.

Respectfully submitted,

Date: October 22, 2004

By:



Laurence P. Hobbes
Attorney for Applicant
Registration No. 29,651

Roberts, Mlotkowski & Hobbes
8270 Greensboro Drive
Suite 850
McLean, VA 22102
(703) 584-3271
Fax: (703) 848-2981